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BEST SANITIZERS, INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BEST SANITIZERS, INC.,

Plaintiff,

vs.

BRAND BUZZ LIMITED LIABILITY
COMPANY,

Defendant.

Case No.: _____

COMPLAINT FOR:

- (1) Breach of Contract;
- (2) Open Book Account;
- (3) Account Stated;
- (4) Unjust Enrichment; and
- (5) Declaratory Relief.

DEMAND FOR JURY TRIAL

Plaintiff Best Sanitizers, Inc. alleges on information and belief as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as diversity exists between the parties and the value of the matter in controversy exceeds the sum of \$75,000.00.

2. Venue in this jurisdiction is appropriate under 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the transactions or events alleged in this Complaint occurred in this judicial district and the Defendants are subject to personal jurisdiction in this judicial district.

PARTIES

3. Plaintiff Best Sanitizers, Inc. ("Plaintiff" or "Best Sanitizers") is a corporation organized and existing under the laws of the State of California with its principal place of business in Nevada City, California.

GENERAL ALLEGATIONS

Course of Transactions with Brand Buzz

– 2 –

1 the “Past Due Balance”) as well as finance charges on the Past Due Balance through the date
2 of this Complaint, assessed and calculated as set forth in the provisions of the Agreement.

3 9. As set forth in **Exhibit B**, Brand Buzz placed its first order with Best Sanitizers
4 on December 28, 2020, before the full execution of the Agreement on January 13, 2021. The
5 invoice on this first order; however, was eventually fully paid and Best Sanitizers does not
6 seek any further payment or interest for this first order.

7 10. As further set forth in **Exhibit B**, Brand Buzz placed a total of thirteen (13)
8 orders, with its last order placed on March 3, 2021. Brand Buzz made a series of partial
9 payments on most of these orders, paying some invoices off entirely, but leaving others
10 partially or entirely unpaid. Brand Buzz made its last payment on August 30, 2021. In total,
11 Brand Buzz purchased goods from Best Sanitizers having a value of \$1,002,495.18. Brand
12 Buzz paid \$830,299.05 for such goods, leaving a Past Due Balance of \$168,625.02, following
13 a negotiated adjustment in the billing of \$3,571.11.¹

14 **Brand Buzz’s Assurances and Admissions of Responsibility for Past Due Balance**

15 11. On numerous occasions Brand Buzz representatives confirmed that Brand Buzz
16 owed the Past Due Balance and promised to bring the account with Best Sanitizers current.

17 12. For example:

- 18 (a) On October 22, 2021, Jennifer Mahon, authorized representative of Brand
19 Buzz, stated in an email to Carrie Derise, Best Sanitizers’ Assistant
20 Controller, that money owed on certain invoices would be “processed for
21 payment” before the end of October 2021.
- 22 (b) On November 19, 2021, after no payment and repeated inquiry, Ms.
23 Mahon stated to Ms. Derise that past due payment would be processed by
24 the end of November 2021.
- 25 (c) In late December 2021 or early January 2022, after no payment as
26 promised, Best Sanitizers threatening to turn the matter over to
27

28 ¹ As reflected in **Exhibit B**, there were some isolated questions about pricing that Best Sanitizers timely addressed with adjustments to the invoices that Brand Buzz accepted.

collections, and escalating the request for payment to management, Ms. Mahon left a voicemail for Jason Petersen, Best Sanitizers' Product Development Manager, again promising payment.

13. In each of the foregoing communications, Brand Buzz acknowledged that it owed the sums for which Best Sanitizers sought payment, made no indication that any such debt was disputed, yet ultimately failed to pay.

Best Sanitizers' Damages

14. As a direct, legal, and proximate result of Defendant's wrongful actions and/or inaction, Best Sanitizers has suffered damages including, but not limited to, the following:

- (a) Best Sanitizers has been damaged in the amount of and is entitled to recover as damages the Past Due Balance, amounting to \$168,625.02.
- (b) Best Sanitizers has been deprived of the use-value of the Past Due Balance and, pursuant to the provisions of the Agreement, is entitled to recover finance charges computed at 1 and ½ % per month (18% annually) of the sum of the Past Due Balance remaining thirty (30) days after invoicing. The sum of such charges amounts to \$49,462.86, as of the date of this Complaint.
- (c) Best Sanitizers has incurred and continues to incur reasonable attorney fees and other costs relating to the recovery of the Past Due Balance, which it is entitled to recover from Defendant pursuant to a fee shifting provision in the Agreement. The sum of such expenditures presently amounts to more than \$10,000.00, and that sum continues to increase.

FIRST CAUSE OF ACTION

(Breach of Contract)

15. Best Sanitizers incorporates by reference each of the allegations of the foregoing paragraphs of this Complaint.

16. Best Sanitizers has performed or at all times was willing and prepared to perform all of the terms, conditions, and obligations on its part under the Agreement except insofar as Best Sanitizers was prevented from fulfilling its obligations as a result of Brand Buzz's

1 conduct or was excused from such obligations as a result of impossibility, failure of condition
2 precedent or a similar legal excuse.

3 23 Brand Buzz has breached the Agreement as is alleged in the foregoing
4 paragraphs of this Complaint.

5 24 As a direct, legal, and proximate result of Brand Buzz's breach of contract, Best
6 Sanitizers has suffered damage including, but not limited to, that described in paragraph 14 of
7 this Complaint, and is entitled to monetary compensation and other relief and remedies.

8 **SECOND CAUSE OF ACTION**

9 **(Open Book Account)**

10 25 Best Sanitizers incorporates by reference each of the allegations of the foregoing
11 paragraphs of this Complaint.

12 26 Best Sanitizers alleges the following cause-of-action as an alternative to the other
13 causes-of-action alleged in this Complaint.

14 27 Best Sanitizers and Brand Buzz engaged in a series of financial transaction in
15 which Best Sanitizers sold and Brand Buzz purchased certain goods for which Brand Buzz was
16 obligated to pay Best Sanitizers.

17 28 In the regular course of its business, Best Sanitizers kept a detailed and accurate
18 written or electronic account of the debits and credits involved in the transactions as set forth in
19 **Exhibit B** as well as in additional records kept by Best Sanitizers.

20 29 Brand Buzz made some payment on the account, but left a balance due.

21 30 Based upon Best Sanitizers' accounting, Brand Buzz owes an unpaid balance of
22 \$168,620.02 to Best Sanitizers.

23 **THIRD CAUSE OF ACTION**

24 **(Account Stated)**

25 31 Best Sanitizers incorporates by reference each of the allegations of the foregoing
26 paragraphs of this Complaint.

27 32 Best Sanitizers alleges the following cause-of-action as an alternative to the other
28 causes-of-action alleged in this Complaint.

33 Brand Buzz owes Best Sanitizers money based upon a series of financial transactions as set forth in the foregoing paragraphs of this Complaint and its **Exhibit B**.

34 Best Sanitizers and Brand Buzz, by words or conduct, agreed that the amount that Best Sanitizers claims to be due from Brand Buzz, the Past Due Balance, was the correct amount owed.

35 Brand Buzz, by words or conduct, promised to pay the Past Due Balance to Best Sanitizers.

36 Brand Buzz has not paid Best Sanitizers any part of the Past Due Balance.

37 The Past Due Balance amounts to \$168,620.02.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

38 Best Sanitizers incorporates by reference each of the allegations of the foregoing paragraphs of this Complaint.

39 As set forth in the foregoing paragraphs of this Complaint and its **Exhibit B**, Best Sanitizers has conferred a benefit upon Brand Buzz in the form of goods transferred.

40 Brand Buzz has received the benefit of such goods without paying Best Sanitizers and Best Sanitizers has now been deprived of the benefit of the goods without recompense.

41 Best Sanitizers has suffered and continues to suffer damages equal to the amount Brand Buzz has been unjustly enriched as set forth herein. It would be unfair and unjust for Brand Buzz to retain the benefit of the goods without payment therefore. Best Sanitizers is entitled to recover the amount of such unjust enrichment.

FIFTH CAUSE OF ACTION

(Declaratory Relief)

42 Best Sanitizers incorporates by reference each of the allegations of foregoing paragraphs of this Complaint.

43 Best Sanitizers believes that Defendant owes it the Past Due Balance.

44 As is demonstrated by its failure to pay the Past Due Balance, Defendant believes that it is not obligated to pay.

45 An actual controversy has arisen and now exists between Best Sanitizers and Brand Buzz regarding the amount owed and the obligation to pay.

46 Best Sanitizers is entitled to and requests a judicial determination of the obligations of Brand Buzz under the Agreement or resulting from the series of transactions described in this Complaint and an order requiring Brand Buzz to pay the Past Due Balance and any additional associated costs and expenses incurred by Best Sanitizers.

PRAYER FOR RELIEF

WHEREFORE Best Sanitizers prays for judgment as follows:

1. For all damages Best Sanitizers has suffered as a result of Defendant's breach of the Agreement, including but not limited to the Past Due Balance of \$168,620.02, according to proof at trial;

2. Alternatively, for the amount owed to Best Sanitizers by Brand Buzz based upon Best Sanitizers' record of accounts and debits, according to proof at trial.

3. Alternatively, for the amount owed to Best Sanitizers by Brand Buzz as agreed between the two, according to proof at trial;

4. For a declaration that Best Sanitizers is owed the Past Due Balance of \$168,620.02 and such other equitable relief as is appropriate;

5. For the award of finance charges of \$49,462.86 as set forth in the Agreement.

6. For an award of reasonable attorneys' fees, costs and legal expense based upon the fee shifting provision of the Agreement;

7. For the award of post judgment interest in the amount allowed by law;

8. For such other and further relief as the Court deems appropriate; and

9. For the costs of suit incurred herein.

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

DATED: January 13, 2023

THE BURTON LAW FIRM

By /s/ Michael S. Wilcox
Michael S. Wilcox

Attorneys for Plaintiff
BEST SANITIZERS, INC.

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EXHIBIT “A”



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PO Box 1360, Penn Valley, CA 95946
www.bestsanitizers.com

CUSTOMER AGREEMENT

COMPANY NAME Brand Buzz LLC
MAILING ADDRESS 1407 Broadway- Suite 601
CITY NEW YORK STATE NY ZIP 10018
MAIN PHONE 212-244-2456 MAIN FAX _____

NAME & TITLE of OFFICERS/PRINCIPALS:

STEVEN SHWEKY / PRESIDENT

_____YEARS IN BUSINESS _____ or YEAR INCORPORATED 2014

SALES TAX-EXEMPT? YES ☒ NO _____ RESALE CERTIFICATE # 46-4459948
A Re-Sale Certificate and current W-9 form MUST accompany this agreement.

AGREEMENT & AUTHORIZATION

Best Sanitizers, Inc. is hereby authorized to obtain credit, and/or financial information, from the credit references provided. It is understood that such credit, and/or financial information, will be held in strict confidence by Best Sanitizers, Inc. and used only in consideration to extend credit. Upon approval of credit, the above Company agrees that all purchases will be paid in full, in accordance with the terms of sale, as stated on Best Sanitizers, Inc. invoices. Finance charges computed at 1 ½ % per month (18% annually) may be added to invoices unpaid beyond the agreed upon terms. Should the above Company not pay according to terms, it is understood that credit privileges will be placed on hold and any new orders must be paid for in advance until account is brought current. Should Best Sanitizers, Inc. find it necessary to obtain assistance in collecting any past due balance, the above Company agrees to pay any related collection fees, as well as reasonable attorney fees and/or incurred court costs, as allowable by law. Unless otherwise agreed upon TERMS are Net 30 days from date of invoice and FOB shipping point. Freight charges are added to each invoice, unless another shipper is agreed upon and a valid account number for same is provided. . If damages and/or shortages occur, the loss MUST be noted on the Bill Of Lading AND advised to Best Sanitizers, Inc. within fifteen (15) business days, to make a claim (or short payment), otherwise the above Company will be responsible for the invoiced cost in full. By signing below you state that you are an authorized agent of the above company to engage in business and agree to the above in its entirety.

Authorized Signature Jennifer L Mahon Date 1/13/2021
Print Name JENNIFER MAHON Print Title Sr. Production & QA Manager

CREDIT REFERENCES MUST BE INCLUDED WITH THIS APPLICATION

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EXHIBIT “B”

1/2/2023 (Today's Date)

Brand Buzz LLC

Invoice Dates From 1/1/2020 to 10/31/2022

BB PO#	Invoice No.	Order Date	Invoice Date	Payment Due Date	Check Date	Invoice Amount	Check Amount	Amount Applied	Discount/ Variance*	Payment Days Late	BALANCE STILL DUE	Number of Months Past Due	1.5% of Past Due Balance	Finance Charge (1.5% x Months)
BB10007	550248-BSI	12/28/2020	12/30/2020	12/30/2020	1/14/2021	58,888.11	29,444.06	29,444.06		15				
BB10007	550248-BSI	12/28/2020	12/30/2020	12/30/2020	4/15/2021	58,888.11	289,047.90	29,444.05		106	0			
BB100014	550876-BSI-Rev	1/15/2021	1/19/2021	2/18/2021	4/15/2021	71,489.50	289,047.90	71,489.50		56	0.00			
BB100014	551692-BSI	2/2/2021	2/3/2021	3/5/2021	4/15/2021	45,733.68	289,047.90	45,733.68		41	0.00			
BB100014	551695-BSI	2/2/2021	2/3/2021	3/5/2021	4/15/2021	26,812.80	289,047.90	26,812.80		41	0.00			
BB100014	554001-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	15,199.17	142,929.58	15,198.23	0.94	106	0.00			
BB100014	557044-BSI	2/18/2021	8/11/2021	9/11/2021		23,202.13				478	23,202.13	15.9	348.03	5,545.31
BB100015	551119-BSI-Rev	1/21/2021	1/22/2021	2/21/2021	4/15/2021	43,763.95	289,047.90	43,763.95		53	0.00			
BB100015	551693-BSI	2/2/2021	2/3/2021	3/5/2021	4/15/2021	8,357.70	289,047.90	8,357.70		41	0.00			
BB100015	551694-BSI	2/2/2021	2/3/2021	3/5/2021	4/15/2021	33,224.40	289,047.90	33,224.40		41	0.00			
BB100015	552427-BSI	2/19/2021	2/25/2021	3/27/2021	7/13/2021	8,508.15	197,931.08	8,497.20	10.95	108	0.00			
BB100021	551696-BSI	2/2/2021	2/3/2021	3/5/2021	4/15/2021	2,376.71	289,047.90	2,376.71		41	0.00			
BB100021	552426-BSI	2/18/2021	2/25/2021	3/27/2021	7/13/2021	55,089.69	197,931.08	55,089.69		108	0.00			
BB100021	552850-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	9,264.10	197,931.08	9,264.10		95	0.00			
BB100021	553041-BSI	2/18/2021	3/17/2021	4/16/2021	5/26/2021	6,976.40	170,946.43	6,976.40		40	0.00			
BB100021	552430-BSI	2/18/2021	2/25/2021	3/27/2021	7/13/2021	21,723.79	197,931.08	21,721.80	1.99	108	0.00			
BB100021	553736-BSI	4/8/2021	4/8/2021	5/8/2021		7,647.99				604	7,647.99	20.1	114.72	2,309.69
BB100022	552428-BSI	2/18/2021	2/25/2021	3/27/2021	7/13/2021	2,571.60	197,931.08	2,570.40	1.20	108	0.00			
BB100022	552848-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	18858.40	197,931.08	18,849.60	8.80	95	0.00			
BB100022	552429-BSI	2/18/2021	2/25/2021	3/27/2021	7/13/2021	38,724.00	197,931.08	38,724.00		108	0.00			
BB100022	553305-BSI	2/18/2021	3/26/2021	4/25/2021	5/26/2021	9,863.76	170,946.43	9,863.76		31	0.00			
BB100022	553553-BSI	2/18/2021	4/2/2021	5/2/2021	5/26/2021	270.24	170,946.43	270.24		24	0.00			
BB100022	555141-BSI	5/27/2021	5/27/2021	6/26/2021	8/30/2021	728.62	142,929.58	728.28	0.34	65	0.00			
BB100022	553737-BSI	4/8/2021	4/8/2021	5/8/2021		11,359.04				604	11,359.04	20.1	170.39	3,430.43
BB100023	552846-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	3,878.52	197,931.08	3,666.29	212.23	95	0.00			
BB100023	552846-CM	2/18/2021	7/26/2021	8/25/2021	7/13/2021	-56.21	197,931.08	-56.21			0.00			
BB100023	553044-BSI	2/18/2021	3/17/2021	4/16/2021	5/26/2021	29,614.40	170,946.43	28,704.63		40	0.00			
BB100023	553044-BSI	2/18/2021	3/17/2021	4/16/2021	8/13/221	29,614.40	170,946.43	28,704.63	909.77	40	0.00			
BB100023	552847-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	20,810.32	197,931.08	20,803.32	7.00	95	0.00			
BB100023	553998-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	2,376.71	142,929.58	2,376.71		106	0.00			
BB100023	555142-BSI	5/27/2021	5/27/2021	6/26/2021	8/30/2021	2,485.88	142,929.58	2,484.72	1.16	65	0.00			
BB100023	553739-BSI	2/18/2021	4/8/2021	5/8/2021		4,407.31				604	4,407.31	20.1	66.11	1,331.01

BB100024	552845-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	6989.04	197,931.08	6,984.96	4.08	95	0.00			
BB100024	553043-BSI	2/18/2021	3/17/2021	4/16/2021	5/26/2021	13933.14	170,946.43	13,885.88		40	0.00			
BB100024	553043-BSI	2/18/2021	3/17/2021	4/16/2021	8/13/2021	13933.14	170,946.43	13,885.88	47.26	40	0.00			
BB100024	553304-BSI	2/18/2021	3/26/2021	4/25/2021	5/26/2021	20093.49	170,946.43	20,093.49		31	0.00			
BB100024	553552-BSI	2/18/2021	4/2/2021	5/2/2021	5/26/2021	36743.85	170,946.43	36,743.85		24	0.00			
BB100024	553554-BSI	2/18/2021	4/2/2021	5/2/2021	5/26/2021	9165.64	170,946.43	9,165.64		24	0.00			
BB100024	554004-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	33051.72	142,929.58	30,764.16	2,287.56	106	0.00			
BB100024	557048-BSI	2/18/2021	8/11/2021	9/11/2021		1373.72				478	1,373.72	15.9	20.61	328.32
BB100025	552849-BSI	2/18/2021	3/10/2021	4/9/2021	7/13/2021	3458.00	197,931.08	3,458.00		95	0.00			
BB100025	553996-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	27238.40	142,929.58	27,238.40		106	0.00			
BB100025	559214-BSI	2/18/2021	10/26/2021	11/26/2021		27052.20				402	27,052.20	13.4	405.78	5,437.49
BB100026	552431-BSI	2/18/2021	2/25/2021	3/27/2021	7/13/2021	8357.93	197,931.08	8,357.93		108	0.00			
BB100026	553997-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	12256.61	142,929.58	12,251.94	4.67	106	0.00			
BB100026	553040-BSI	2/18/2021	3/17/2021	4/16/2021	5/26/2021	12456.22	170,946.43	12,456.22		40	0.00			
BB100026	555140-BSI	2/18/2021	5/27/2021	6/26/2021	8/30/2021	6648.19	142,929.58	6,648.19		65	0.00			
BB100026	553735-BSI	2/18/2021	4/8/2021	5/8/2021		18904.80				604	18,904.80	20.1	283.57	5,709.25
BB100026	557045-BSI	2/18/2021	8/11/2021	9/11/2021		8971.06				478	8,971.06	15.9	134.57	2,144.08
BB100027	554000-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	7014.77	142,929.58	7,013.28	1.49	106	0.00			
BB100027	554003-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	871.26	142,929.58	810.96	60.30	106	0.00			
BB100027	557047-BSI	2/18/2021	8/11/2021	9/11/2021		8174.76				478	8,174.76	15.9	122.62	1,953.77
BB100027	559213-BSI	2/18/2021	10/26/2021	11/26/2021		33726.24				402	33,726.24	13.4	505.89	6,778.97
BB100027		2/18/2021												
BB100029	553551-BSI	2/18/2021	4/2/2021	5/2/2021	5/26/2021	3648.69	170,946.43	3,648.69		24	0.00			
BB100029	554002-BSI	2/18/2021	4/16/2021	5/16/2021	8/30/2021	19476.81	142,929.58	19,465.44	11.37	106	0.00			
BB100029	555139-BSI	2/18/2021	5/27/2021	6/26/2021	8/30/2021	16541.70	142,929.58	16,541.70		65	0.00			
BB100029	557046-BSI	2/18/2021	8/11/2021	9/11/2021		2363.10				478	2,363.10	15.9	35.45	564.78
BB100029		2/18/2021												
BB100030	553042-BSI	2/18/2021	3/17/2021	4/16/2021	5/26/2021	17306.10	170,946.43	17,306.10		40	0.00			
BB100030	553550-BSI	2/18/2021	4/2/2021	5/2/2021	5/26/2021	10202.85	170,946.43	10,202.85		24	0.00			
											0.00			
BB100032	553039-BSI	3/3/2021	3/17/2021	4/16/2021	5/26/2021	1628.68	170,946.43	1,628.68		40	0.00			
BB100032	553999-BSI	3/3/2021	4/16/2021	5/16/2021	8/30/2021	1407.57	142,929.58	1,407.57		106	0.00			
BB100032	553738-BSI	3/3/2021	4/8/2021	5/8/2021		8283.89				604	8,283.89	20.1	124.26	2,501.73
BB100032	555143-BSI	3/3/2021	5/27/2021	6/27/2021		32787.90				554	32,787.90	18.5	491.82	9,082.25
BB100032	557049-BSI	3/3/2021	8/11/2021	9/11/2021		9814.94				478	9,814.94	15.9	147.22	2,345.77
BB100015	559560-CM		11/9/2021			-1598.95				Avail Credit	-1,598.95			
	ONACCT**				4/15/2021	-27845.11				Avail Credit	-27,845.11			

1,002,495.18	830,299.05	802,453.94	3,571.11	168,625.02	2,971.04	49,462.86
Total Invoiced	Total Paid	Applied to Invoices	Discounted*	Total Past Due		Total Finance Charges
1,002,495.18						

Past Due Invoices + Monthly Finance Fee	\$218,087.88
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* NOTE: Discount/variance - adjustments made due to price variances. BrandBuzz was to be charged negotiated Clorox pricing.

** ONACCT credit is from 04.15.2021 payment - portion not applied. Applied \$261,202.79 of \$289,047.90 to invoices due.